STATE OF MICHIGAN

COURT OF APPEALS

TERESA JORDAN, Plaintiff-Appellant,	UNPUBLISHED May 21, 2013
v	No. 309809 Oakland Circuit Court
COUNTRY COURT APARTMENTS, Defendant-Appellee.	LC No. 2011-118272-NO

Before: BORRELLO, P.J., and K.F. KELLY and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Dextrom v Wexford Co*, 287 Mich App 406, 416; 789 NW2d 211 (2010). When reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a court must examine the documentary evidence presented and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Id*. at 415-416.

Plaintiff was injured when she fell outside of her apartment complex. Specifically, plaintiff fell and sustained injury when she turned and looked away from the ground beneath her while walking on the sidewalk. At that time, plaintiff felt her foot move down into a depression in the ground adjacent to the sidewalk. The grassy area immediately adjacent to the sidewalk where plaintiff fell was approximately two inches lower in height than the sidewalk.

Plaintiff filed suit, claiming negligence as well as breach of statutory duties under MCL 554.139. At the close of discovery, defendant moved for summary disposition. The trial court granted summary disposition to defendant on all counts. The only issue raised on appeal is whether the trial court erred in ordering summary disposition with regard to plaintiff's claim brought under MCL 554.139(1)(a).

MCL 554.139 provides, in relevant part, as follows:

> (1) In every lease or license of residential premises, the lessor or licensor covenants:

(a) That the premises and all common areas are fit for the use intended by the parties.

* * *

(3) The provisions of this section shall be liberally construed . . . .

Therefore, under MCL 554.139(1)(a), "a landlord has a duty to take reasonable measures to ensure that sidewalks are fit for their intended use." *Benton v Dart Props, Inc*, 270 Mich App 437, 444; 715 NW2d 335 (2006).

Plaintiff argues that the two-inch gap between the sidewalk and adjacent ground, combined with inadequate lighting and light snow concealing the gap, caused the sidewalk to be unfit for its intended use, in breach of defendant's duties under MCL 554.139(1)(a). To state the obvious, the intended use of a sidewalk is walking on it. *Benton*, 270 Mich App at 444. As the trial court correctly pointed out, there was nothing keeping plaintiff from walking down the middle of the sidewalk. Nor is there any allegation that the sidewalk itself was defective. MCL 554.139(1)(a) "does not require a lessor to maintain . . . [the sidewalk] in an ideal condition or in the most accessible condition possible," but rather, merely in a condition that renders it fit for the use intended by the parties. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 430; 751 NW2d 8 (2008). Therefore, the sidewalk in the present case, whose surface was free of snow, ice, or any other defect, was fit for its intended use. The presence of a depression adjacent to, but outside of, the sidewalk itself does not render that sidewalk unfit to be walked on.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray